IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.337 OF 2007

Mr.Vithal K. Shetty. ... .. Appellant
(Org.Plaintiff)

v/s.

1.State of Maharashtra & ors. ... .. Respondents
(Org.Defts.)

Mr.G.S.Godbole i/by M/s.Shamim & Co. for Appellant.

Mrs.Kiran Bhagalia for Respondents.

CORAM : ABHAY S. OKA, J.

DATED : 23rd April, 2007

P.C. :

1. Heard the learned Advocates appearing for the parties.

2. By the order impugned in this Appeal, the learned Judge of the City Civil Court, Mumbai, has declined to grant ad-interim relief in favour of the Appellant (original Plaintiff) in Notice of Motion No.1401of 2007.

3. The contention of the learned Advocate for the Appellant is that the structure of the Appellant has been illegally and unauthorisedly demolished. He submits that till the Notice of Motion is heard on merits, status quo as of today will have to be maintained by the Respondents as the substantive prayer in the Notice of Motion is for reconstruction of the structure.

4. The learned Advocate for the 3rd Respondent states that on the land below the structure, the 3rd Respondent proposes to construct a road.

5. The suit structure is already demolished. The question whether the structure could have been demolished and now whether the Appellant is entitled to order of reconstruction will have to be naturally decided at the

time of finally deciding the Notice of Motion. The submission of the learned Advocate appearing for the Appellant was that if road is constructed on the land below the structure, it will not be possible for the Trial Court to grant relief for reconstruction, even if a case is made out by the Appellant.

6. The land below the structure is to be utilized for construction of the road and it is obvious that the said land is not to be allotted or handed over to any third party. Therefore, there is no merit in the said submission of the learned Advocate appearing for the Appellant.

7. As far as the prayer for restoration of the structure is concerned, the Notice of Motion will have to be decided expeditiously.

8. Hence, I pass the following order:-

O R D E R

(i) The Appeal is dismissed.

(ii) The Trial Court will decide Notice of Motion No.1401 of 2007 as expeditiously as possible and preferably, on or before 26th June 2007.

(iii) It is made clear that all contentions of the parties on merits of the Suit as well as Notice of Motion are expressly kept open.

(iv) The Trial Court to act upon an authenticated copy of this order.

(v) In view of the dismissal of the Appeal, nothing survives in the Civil Application and the same is dismissed as rendered infructuous.

(ABHAY S. OKA, J.)